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IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
TASZEWELL COUNTY

OCT 23 1975

FRANK ROSENBERG INC.,
an Illinois Corporation,

Plaintiff,

vs

CITY OF PEKIN, a
Municipal Corporation,

Defendant.

TASZEWELL COUNTY CIRCUIT CLERK
TENTH JUDICIAL CIRCUIT OF ILLINOIS

NO. 75-L-1882

COMPLAINT

Now comes the plaintiff, FRANK ROSENBERG INC.; by its attorneys CASSIDY, CASSIDY & MUELLER and for Complaint against the defendant CITY OF PEKIN alleges:

COUNT I

1. The defendant, CITY OF PEKIN is and at all times relevant to this action has been a municipal corporation organized and existing under the laws of the State of Illinois located in Tazewell County, Illinois.

2. That the plaintiff, FRANK ROSENBERG INC., is an Illinois Corporation and at all times relevant to this action has been the owner of the following described real estate situated in Tazewell County, Illinois:

A part of the southeast quarter of Section 9 in Township 24 North, Range 5 West of the Third Principal Meridian, more fully described as follows: From the northeast corner of the southeast quarter of said Section 9 thence west 33 feet to the west right-of-way line of State Highway No. 29 (South Second St.), thence south along said west right-of-way line for a distance of 2,117.7 feet, thence west and parallel with the north line of said southeast quarter of said Section 9 for a distance of 360 feet to the place of beginning of the tract herein described, thence north and parallel with said State Highway No. 29 for a distance of 650 feet, thence N30°00'W for a distance of 1200 feet, thence west and parallel with

PLAINTIFF'S EXHIBIT B

the north line of said southeast quarter of said Section 9 for a distance of 530 feet, more or less, to the easterly right-of-way line of the C. & N.W. Ry., thence south easterly along said easterly right-of-way line for a distance of 1820 feet, more or less, to the southwest corner of the tract now owned by the grantor herein, thence East and parallel with the north line of said southeast quarter of said Section 9 for a distance of 479.6 feet to the place of beginning and also an access strip 50 feet in width, between the tract hereinabove described and said State Highway No. 29 lying immediately north of and along the 2-acre parcel previously conveyed by the grantor herein to The Pekin Farmers' Grain Co., being in all 25 acres, more or less, all lying in the southeast quarter of Section 9, Township 24 North, Range Five West of the Third Principle Meridian, Tazewell County Illinois, as shown on plat, hereto attached.

3. On or about the 22nd day of February 1965 the plaintiff and the defendant entered into that agreement designated LEASE, a copy of which is attached to this Complaint as Exhibit A and made a part hereof.

4. Subsequent to February 22, 1965 the defendant undertook to use the aforesaid land for dumping and fill purposes and such use was continuous to October 15, 1975.

5. Contrary to the terms of the aforesaid agreement designated LEASE and in breach thereof the defendant has:

(a) Failed to conduct a "proper land fill operation" upon the premises and instead has allowed the land to become covered with improperly covered and uncompacted garbage, trash and related disposal materials;

(b) Failed to fill the lands in question to the general level of the lands surrounding, and

(c) Served notice of its intention to breach the agreement prior to filling the lands in question to the general level of the lands surrounding by discontinuing its operations upon plaintiff's property and instead transferring them to another site.

6. Plaintiff has performed all conditions precedent expected of it under the aforesaid agreement.

7. As a result of the aforesaid breaches by defendant the

plaintiff's lands have been converted to a garbage pit and plaintiff has thereby been deprived of the existing and anticipated value of the property to which injury in the sum of Four Hundred Seventy Thousand Dollars (\$470,000).

WHEREFORE plaintiff, FRANK ROSENBERG INC., prays for a judgment in its favor and against the defendant CITY OF PEKIN in the sum of Four Hundred Seventy Thousand Dollars (\$470,000).

PLAINTIFF DEMANDS TRIAL OF THE ISSUES IN THIS CAUSE BY A JURY.

COUNT II

1. Plaintiff repeats and realleges each and every particular contained in paragraph 1 of Count I of this Complaint.

2. Plaintiff repeats and realleges each and every particular contained in paragraph 2 of Count I of this Complaint.

3. Plaintiff repeats and realleges each and every particular contained in paragraph 3 of Count I of this Complaint.

4. By virtue of the aforesaid agreement designated LEASE the defendant was given the limited or conditional right to enter upon plaintiff's lands for the purpose of conducting "a proper land fill operation" toward the end that the lands would be filled to the general level of the lands surrounding.

5. Subsequent to February 22, 1965 the defendant undertook to use the aforesaid land for dumping and fill purposes and such use was continuous to October 15, 1975.

6. Contrary to the terms and conditions of its aforesaid conditional or restricted right to enter upon plaintiff's premises

defendant conducted a land fill operation which was improper and exceeded the scope of plaintiff's invitation in that defendant:

- (a) allowed garbage to remain open and uncovered;
- (b) failed to place proper amounts of cover upon exposed garbage;
- (c) failed to properly and regularly compact garbage and fill material;
- (d) allowed garbage, refuse and their by-products to leach into the adjoining water table;
- (e) failed to control rodents, vermin and insects;
- (f) failed to obtain requisite licenses from the appropriate regulatory bodies, and
- (g) allowed unsanitary and unhealthful conditions to arise and exist to such an extent that the premises cannot be used for the purposes contemplated in the aforesaid agreement designated LEASE.

7. As a result of the aforesaid trespasses of defendant plaintiff has had its premises altered by the repetitive dumping of garbage, refuse and waste materials and will be forced to incur large sums of money to restore said lands to their natural condition to its damage in the sum of Eight Hundred Thirty-Seven Thousand Dollars (\$837,000).

WHEREFORE plaintiff prays for damages in the sum of Eight Hundred Thirty-Seven Thousand Dollars (\$837,000) against defendant CITY OF PEKIN and for its costs incurred in this regard.

PLAINTIFF DEMANDS TRIAL BY JURY OF THE ISSUES IN THIS COUNT.

COUNT III

1. Plaintiff hereby repeats and realleges each and every particular contained in paragraph 1 of Count I of this Complaint.

2. Plaintiff hereby repeats and realleges each and every particular contained in paragraph 2 of Count I of this Complaint.

3. Plaintiff hereby repeats and realleges each and every particular contained in paragraph 3 of Count I of this Complaint.

4. Plaintiff is also the owner of those lands shown on the plat attached to Exhibit A which abut and adjoin the leased premises.

5. Subsequent to February 22, 1965 the defendant undertook to use the aforesaid land for dumping and fill purposes and such use was continuous to October 15, 1975.

6. In the conduct of its land fill operations defendant repeatedly and without authorization went beyond the premises described in the LEASE and without authority entered upon plaintiff's adjoining premises where it took and removed large quantities of earth and fill material.

7. The aforesaid removal of fill materials from plaintiff's adjoining lands constituted both a trespass and a conversion to the plaintiff's damage in the sum of Two Hundred Forty-Three Thousand Dollars (\$243,000).

WHEREFORE plaintiff prays for judgment against the defendant CITY OF PEKIN in the sum of Two Hundred Forty-Three Thousand Dollars (\$243,000) and for its costs of suit.

PLAINTIFF PRAYS THAT THE ISSUES JOINED IN THIS COUNT BE TRIED BY JURY.

CASSIDY, CASSIDY & MUELLER

BY 

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FRANK ROSENBERG, INC.

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PRAECIPE FOR SUMMONS

Clerk of the Circuit Court of the Tenth Judicial Circuit
Tazewell County is requested to issue Summons directed to the
Sheriff of Tazewell County for service upon the defendant CITY OF
PEKIN by serving the City Clerk at his offices in Pekin, Illinois.